



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 14, 1991

Mr. William M. McKamie
Somerville City Attorney
Denton, McKamie & Navarro
Tower Life Bldg., Suite 1700
310 South St. Mary's Street
San Antonio, Texas 78205-3108

OR91-569

Dear Mr. McKamie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14078.

The City of Somerville received two open records requests for the names and addresses of the city mayor and all city councilpersons. Because you do not argue that this information is excepted from disclosure under the Open Records Act, we assume that the city has released this information. The requestors also seek the name and address of the city's insurance carrier "with all declarations." You contend that this information is made confidential by section 101.104 of the Civil Practice and Remedies Code and thus must be withheld from public disclosure pursuant to section 3(a)(1) of the Open Records Act.

Section 101.104 provides:

(a) Neither the existence nor the amount of insurance held by a governmental unit *is admissible in the trial of a suit under this chapter.*

(b) Neither the existence nor the amount of the insurance is *subject to discovery.* (Emphasis added.)

Section 101.104 governs the discovery and admissibility of information pertaining to the city's insurance coverage during a civil lawsuit brought pursuant to the Tort Claims Act. *See* Civ. Prac. & Rem. Code §§ 101.001 *et. seq.* This section is not relevant to whether information pertaining to the city's insurance coverage is available to the general public under the Open Records Act. *See* Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 575 (1990) (section 3(a)(1) of Open Records Act does not encompass discovery privileges).¹

We further note that the requested information is specifically made public in section 6 of the Open Records Act, which provides:

Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

....

(3) information in any account, voucher, or *contract* dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law. (Emphasis added.)

Clearly, an insurance policy carried by the city constitutes a "contract dealing with the receipt or expenditure of public or other funds."

The requested information is not made confidential by section 101.104 of the Civil Practice and Remedies Code, and you have raised none of the other exceptions to public disclosure listed in section 3(a) of the Open Records Act. Consequently, the requested information must be released.

¹Conceivably, this information might be protected if litigation were pending and the information was relevant to that litigation. *See* Open Records Decision No. 551. We note, however, that you have not claimed that the information is excepted from public disclosure by the litigation exception, section 3(a)(3). Therefore, the city has waived its right to raise this exception. *See* Open Records Decision No. 325 (1982) (where a governmental body fails to indicate an applicable exception, the information in question is presumed to be open).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-569.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/RWP/lcd

Ref.: ID# 14178

cc: David Lozano
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